IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 401 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DINESHBHAI BABUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 401 of 2002

MR JOSHI FOR MS SUMAN PAHWA for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 22/04/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 21-12-2001 passed by the District Magistrate, Valsad and he has been declared as

bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. According to learned advocate for the petitioner, the detenu has submitted a representation by R.P.A.D. to the authority through his advocate on 31-12-2001 which has been received by the authority on 2-1-2002. It is submitted that said representation has been rejected by the authority on 29-1-2002 i.e. after a period of about one month and, therefore, there is a delay in considering the representation. Learned APP has fairly admitted the same.

4. It has been held by the Apex Court in a case of Kundanbhai Dulabhai Shaikh Vs. District Magistrate, Ahmedabad and Ors. reported 1996(3) G.L.R. 314 more particularly at head note (B) as under:

> "Constitution of India, 1950 - Art.22(5) Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (VI of 1980) - Sec.8 - Representation of detenu must be disposed of expeditiously - If delay is not satisfactorily explained detention order would be fatally affected."

5. In the present case, it appears that the representation dated 31-12-2001 sent by the advocate of the petitioner has been rejected by the authority on 29-1-2002. No explanation has been putforward by the authority by filing an affidavit explaining satisfactorily the delay caused in rejecting the said representation. Since no satisfactory explanation has been putforth by the said authority for not deciding the representation till 29-1-2002, the order of detention is illegal and the same cannot be sustained.

6. The petition is allowed. The impugned order of detention dated 21-12-2001 passed against the detenu is hereby quashed and set aside. The detenu Dineshbhai Babubhai Patel is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is

permitted.

(R.P.DHOLAKIA,J.)

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